**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6056 OF 1999.**

Padmakar S. Dehane,
R/o: 327, Narayan Peth,
Harideep Apart.,
Pune- 411 030. .Petitioner.

Versus.

1. The Chief Executive Officer,
Zilla Parishad, Yashwantrao Chavan
Bhavan, Shaniwar Peth, Pune.

2. The State of Maharashtra. ..Respondents.

---

Shri. S.V.Sadavarte for the Petitioner.
Shri. Nitin Deshpande for the respondent No.1.
Shri. C. R. Sonawane, AGP for Respondent No.2-State.

**CORAM: S.B.MHASE &**
**D.G.KARNIK, JJ.**

**DATE : JANUARY 13, 2006.**

**ORAL JUDGMENT (PER D.G.KARNIK,J.).**

1. Heard Shri. V.S.Sadavarte for the petitioner, Shri. Nitin Deshpande for respondent No.1 and Shri. C.R.Sonawane, learned AGP for respondent No.2 - State.

2. By this petition, the petitioner prays for a declaration that the departmental enquiry intiated against him was bad in law and a further declaration that the criminal proceedings being Criminal Case No. 281 of 1999, initiated against him were also bad in law.

The petitioner further prays for an injunction restraining the respondents from proceeding with the departmental enquiry and withholding the pensionary benefits.

3. The petitioner was appointed as Gramsevak, Zilla Parishad, Pune in the year 1961. In June 1990 the petitioner was promoted as a Village Development Officer and in March 1993 as an Extension Officer. On 20th October 1993, a charge-sheet was issued to the petitioner on the charges of misappropriation of funds of the Grampanchayat and misuse of public money. The petitioner was also suspended from service pending the departmental enquiry. Shri. M.S.Shanedivan was appointed as an enquiry officer to enquire into the charges of misappropriation and other charges relating to the misconduct. After conducting part of the enquiry, under a report dated September 9, 1997, the Enquiry Officer reported that for non-availability of necessary papers, it was difficult to proceed further with the enquiry and come to any conclusion. The enquiry officer, therefore, returned the papers to the Chief Officer, Zilla Parishad without completing the enquiry and recording any finding on the charges levelled against the petitioner.

4. By a letter dated October 26, 1998 the petitioner was informed that the departmental enquiry was recommenced. Twob further communications dated November 6, 1998 and December 14, 1998 were sent to the petitioner for remaining present for the departmental enquiry. It is thereafter that the petitioner has filed this petition praying for quashing of the departmental enquiry and also for the purpose of quashing the criminal proceedings being Criminal Case No. 281 of 1999 which was initiated against him for misappropriation.

5. Learned counsel for the petitioner states that the departmental proceedings have been initiated against the petitioner malafide; there are some officers who have grudge against the petitioner and, therefore, they have re-initiated the enquiry and the proceedings to harass him. Learned counsel further submitted that the accounts were not audited, which was mandatory under the law, and without auditing the accounts it cannot be held that the petitioner had misappropriated the public funds.

6. In our opinion, the allegations of malafides and harassment are not at all proved. The petitioner has not named any officer who allegedly has or ever had

any malice against him. The petitioner has also not given any particulars of alleged harassment except alleging that some officers were having malice against him. It is easy to allege malice without giving any particulars and any material to support them. We are, therefore, of the view that the allegations of malafides and harassment have no substance.

7. Learned counsel for the petitioner then contended that the petitioner has now retired and, therefore, after his retirement the departmental enquiry cannot be held against him. The departmental proceedings were commenced on 20th October 1993 when the petitioner was still in service. On the same day the petitioner was placed under suspension. No provision of law was pointed out before us to show that the departmental enquiry proceedings, which were commenced while a person was in service and placed under suspension, would come to an end on account of the person attaining the usual age of superannuation.

8. It was contended that by the report dated September 9, 1996, the departmental proceedings were concluded. Therefore, fresh departmental proceedings could not be held in respect of the said charges. We have perused a copy of the report dated September 9,

1996, which is at Exhibit-"C" to the petition. In the report, the Enquiry Officer has noted that some documents and materials were necessary for arriving at any definite conclusion so as to record a finding of guilt or otherwise of the petitioner. He has further stated that the documents were not there available. In the last paragraph of the report he has specifically reported that in the absence of the documents it was not possible to record any finding and, therefore, papers were returned without recording any finding. The Enquiry Officer had not, thus, acquitted the petitioner but had only deferred the enquiry. When the relevant documents and record became available, the enquiry was continued by appointing a new Enquiry Officer. We are, therefore of the view that the continuation of the enquiry, which was not concluded earlier, is not in any way illegal.

9. Learned counsel for the petitioner then contended that for the one and same act for which the departmental enquiry has been initiated, a prosecution has also been lodged. Copy of the Criminal Case No. 281 of 1999 or even the charge sheet issued therein is not annexed to the petition and it is not possible to determine whether that Criminal Case No. 281 of 1999 is in respect of the very charges in respect of which the

departmental enquiry is being held. Assuming, however, that Criminal Case No. 281 of 1999 is in respect of the very charges or very acts of misappropriation in respect of which the departmental enquiry is pending, we see no infirmity in continuation of any criminal prosecution. The same act may give rise to a civil liability and may also amount to a criminal offence for which criminal prosecution is the appropriate remedy. It is not the case of the petitioner that he is in any way prejudiced by continuation of the departmental enquiry and criminal trial simultaneously. The object and purpose of both the proceedings is different, one involves civil consequence, while the other, if proved, would result n a conviction. In the circumstances, both proceedings can be held. In the absence of any material to show prejudice, we see no bar for holding both the proceedings simultaneously.

10. In the circumstances, there is no merit in the petition, which is hereby dismissed. No costs.

**(D.G.KARNIK,J.)** **(S.B.MHASE, J.)**